Adelphia Communications Corporation and Michael R. Lovell, Petitioner and Miscellaneous Warehousemen, Drivers and Helpers, Local 986, International Brotherhood of Teamsters, AFL—CIO. Case 21–RD–2677

April 27, 2001

DECISION ON REVIEW AND ORDER BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

On April 20, 2000, the Regional Director for Region 21 issued a Decision and Order in which she dismissed the petition pursuant to the successor bar doctrine articulated in the Board's decision in *St. Elizabeth Manor, Inc.*, 329 NLRB 341 (1999). In accordance with Section 102.67 of the Board's Rules and Regulations, the Employer filed a timely request for review of the Regional Director's decision. On June 30, 2000, the Board granted the Employer's request for review. Thereafter, the Employer filed a brief on review.

The Board has delegated its authority in this proceeding to a three-member panel.

Having carefully reviewed the entire record in this proceeding, including the Employer's brief on review, we conclude that under the circumstances of this case, the successor bar doctrine does not preclude the processing of the decertification petition and, therefore, we reverse the decision of the Regional Director.

Facts

On May 2, 1997, the Union was certified as the exclusive bargaining representative of a unit of employees at TCI of Los Angeles County (TCI) at its City of Industry facility. TCI and the Union subsequently negotiated a collective-bargaining agreement with effective dates from December 23, 1997, to December 31, 1999. On November 18, 1998, TCI, through an affiliate, and Century Communications Corporation (Century), through an affiliate, entered into an Agreement of Limited Partnership, by which the two companies agreed to form a new entity to be named the Century-TCI California Limited Partnership (Century-TCI partnership). On the same date, Century and TCI additionally entered into an Asset Contribution Agreement providing that, upon the closing of the partnership transaction on some future date, (1) TCI Communications would contribute certain assets to the Century-TCI partnership and (2) Century would become the managing partner of the Century-TCI partnership and, consequently, the employer of the TCI City of Industry employees.

On October 1, 1999, prior to the closing of the Century-TCI partnership transaction, the Employer acquired Century through a stock merger. As a consequence of

this merger, the Employer, rather than Century, was to become the managing partner of the partnership upon the closing of the Century-TCI partnership transaction.

The Century-TCI partnership transaction ultimately closed on December 7, 1999. As a result, the TCI employees were terminated as of December 6, 1999, and were subsequently placed on the Employer's payroll, effective December 7, 1999. Also on December 7, the Employer adopted the collective-bargaining agreement between TCI and the Union.

The Petitioner filed the instant decertification petition on October 18, 1999, prior to the closing of the partnership transaction and the Employer's consequent assumption of TCI's operations. Processing of the petition was held in abeyance, however, pending the investigation of various unfair labor practice charges filed by the Union against TCI. Following the ultimate dismissal or withdrawal of all the charges, processing of the petition resumed.

Based on these facts, the Regional Director concluded that the Employer became a successor employer to TCI as of December 7, 1999, the date on which the Employer assumed TCI's operations and hired its employees.¹ Having concluded that the Employer was a successor employer, the Regional Director further concluded, in accordance with the Union's contentions, that the successor bar doctrine announced in St. Elizabeth Manor, Inc., supra, served to bar the decertification petition. In her Decision and Order, the Regional Director discussed the significant distinctions between the instant case and St. Elizabeth. For example, the decertification petition in the present case was filed several weeks prior to the date on which the Employer became a successor employer, and the Employer adopted its predecessor's collectivebargaining agreement with the Union. Nevertheless, the Regional Director determined that various policy considerations justified the application of the Board's decision in St. Elizabeth to this case. For the reasons that follow, we believe that the Regional Director erred.

Analysis

In *St. Elizabeth*, the Board held that once a successor employer's obligation to recognize an incumbent union attaches, the incumbent union is entitled to a reasonable period of time for bargaining without challenge to its majority status by a decertification petition, employer petition, or rival union petition. In so holding, the Board

¹ None of the parties has disputed the Employer's status as a successor employer. Similarly, although the Union contended at the hearing that the Employer became a successor employer as of October 1, 1999, the date on which it acquired Century via stock merger, no party has requested review of the Regional Director's finding that the Employer became a successor employer as of December 7, 1999.

emphasized that its decision was not intended to give the union an unfair advantage, but rather to simply "protect the newly established bargaining relationship and the previously expressed majority choice, taking into account that the stresses of the organizational transition may have shaken some of the support the union previously enjoyed." *St. Elizabeth*, supra at 342.

In contrast to *St. Elizabeth*, in which an RM petition was filed by a successor employer nearly 5 months after it had assumed operations and 3 months after it had granted recognition to the incumbent union, the decertification petition here was filed at a time when the Union was still in a bargaining relationship with the Employer's predecessor. Indeed, the petition was filed during the window period of the predecessor's contract, and, had the predecessor employer continued in existence, an election would have been held after the unfair labor practice charges filed by the Union were ultimately dismissed or withdrawn.

Under these circumstances, the underlying purpose of the successor bar doctrine—to permit the union, as a party to a newly established relationship, to bargain for a reasonable period of time free from challenges to its majority status-would not be served. First, the petition was filed by the Petitioner before the Employer even became a successor employer. Thus, in contrast to the successor employer situation contemplated in St. Elizabeth—in which the "employees' concern over the security of their continued employment and working conditions" as a result of a change in ownership could "lead to employee disaffection before the union has had the opportunity to demonstrate its continued effectiveness"2—the Employer's subsequent assumption of operations here could not have been the source of the employees' dissatisfaction with the Union. Although the Union contends that at the time the decertification petition was filed, the employees were aware of, and had expressed concern regarding, the Century-Employer merger and the Employer's eventual assumption of operations—thereby intimating that this concern possibly served as the impetus for the decertification petition—the Union provided no evidence to support this contention. On the other hand, the Petitioner testified that he had made the decision to file the petition long before he had ever heard of Century or the Employer. Therefore, it is equally plausible that the petition was filed simply because the employees were dissatisfied with the Union's performance, and the "window period" of the TCI-Union collective-bargaining agreement represented the first opportunity for the employees to file the petition during the term of the contract.

Additionally, we disagree with the Regional Director's suggestion that the dismissal of the petition pursuant to the successor bar doctrine represents the appropriate balance between the Section 7 rights of employees and the promotion of stability of labor relations. Rather, we find that the application of the successor bar to this situation would in fact provide an "unfair advantage" to the Union, contrary to the Board's intent in St. Elizabeth and, additionally, would effectively abrogate the Section 7 rights of the employees to select or decertify a bargaining representative. Indeed, as observed above, the decertification petition here was timely filed during the window period of the TCI-Union collective-bargaining agreement and would have resulted in an election had the predecessor employer remained in existence. In this setting, the subsequent successorship does not serve to extinguish those employee rights to an election pursuant to the timely filed petition or to insulate the incumbent union from challenge.

Finally, the Regional Director's dismissal of the petition in effect treats the collective-bargaining agreement voluntarily adopted by the Employer after the petition was filed as a bar to an election. However, it is well settled that if a petition is timely filed, a contract subsequently entered into will not bar the processing of the petition and the holding of an election. *City Markets, Inc.*, 273 NLRB 469 (1984); *Deluxe Metal Furniture Co.*, 121 NLRB 995 (1958).

For all the foregoing reasons, we conclude that the successor bar doctrine does not apply to preclude the processing of the petition in this case.³

ORDER

The Regional Director's Decision and Order is reversed, and the case is remanded to the Regional Director for processing of the petition and further appropriate action consistent with this decision.

² St. Elizabeth, supra.

³ Member Hurtgen adheres to the dissent in *St. Elizabeth*. He agrees with his colleagues, however, that even under the majority opinion in that case, there is no bar to the petition here.